

To: Chair Marsh; Vice-Chairs Andersen and Breese-Iverson; Members of the House Committee on Housing & Homelessness

From: Tracy Rainey, Government Relations Manager (Clean Water Services) –
raineyt@cleanwaterservices.org

Date: March 3, 2025

RE: HB 2138 – Requested Amendments to Address Local Utility Concerns

Clean Water Services is a local government (county service district) that provides sanitary sewer and stormwater management services to over 600,000 residents and businesses within urbanized portions of Washington County, including within 12 cities. The services we provide and the infrastructure that we build, operate and maintain are driven by our National Pollutant Discharge Elimination System (NPDES) permit, which is issued by the Oregon Department of Environmental Quality but required under the federal Clean Water Act.

We want to extend our appreciation to the Governor’s office for their continued effort to reach out to stakeholders, including public utility providers, and to revise language based on feedback received.

We continue to work with the Governor’s office to ensure that the language in HB 2138 does not conflict with requirements outlined in NPDES permits, including water quality standards for stormwater. While the -1 amendments do not yet address these concerns, we have had recent encouraging conversations with the Governor’s office and are confident that we will be able to identify workable language.

Clean Water Act requirements are driven by federal law, but due to Oregon’s primacy, they are administered and implemented through state laws and administrative rules. As an additional layer, it is important to note that these federal/state requirements are implemented through water quality permits that local governments (including cities, counties and special districts) are subject to and responsible for implementing. These permits drive locally-adopted standards and regulations, including design and construction standards for stormwater, to ensure compliance with the federal and state requirements. Failure to adequately implement these Clean Water Act requirements can result in severe consequence for local officials. For this reason, local governments that are subject to Clean Water Act permits need to ensure that they are able to implement these requirements and are, therefore, very cautious about state laws that may be interpreted to create conflict or confusion.

We believe our concerns could be addressed by adding language to clarify that “design and siting standards” do not include facilities, improvements or other requirements that a local government determines are necessary in order to manage the quality or quantity of water in accordance with state or federal clean water standards or regulations.

In addition, we want to ensure that utilities are able to acquire easements to access underground utilities (i.e. ensuring that more densely built, new homes are not constructed in a manner that makes it difficult to access those utility lines). Local governments and urban service providers often require dedication of easements during the development review process to secure future access to public facilities that are located or will be built on private property. For example, public utility easements provide a means for local governments to construct, maintain, and repair facilities such as sewer mains that cross private property. Local governments need to be able to access local utility lines in order to ensure the maintenance, safety and integrity of critical infrastructure. Unfortunately, we have encountered scenarios where older housing sits on top of sewer lines, making it nearly impossible to access and upgrade failing lines. Addressing this issue is critical to ensure that infrastructure is accessible to avoid these highly problematic scenarios that may one day impact the livability and safety of the housing.

Finally, we have concerns that the application of clear and objective standards for stormwater facilities could result in reduced flexibility for utilities to work with developers. There can be opportunities to be more flexible and innovative with the types of stormwater facilities that may be required for a development while ensuring that we can still meet water quality permit requirements. If standards must be clear and objective, we worry that we will need to be more prescriptive and standardized in our approach to stormwater which would reduce options for developers.

Again, we appreciate this opportunity to engage in this discussion and to continue to work with the Governor's office to address these concerns.